

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4745 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

D P SHAH

Versus

GOVT. OF GUJARAT & OTHERS

Appearance:

MR JD AJMERA for the Petitioner

MR HL JANI for the respondent.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/09/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner filed this writ petition before this court, and prayer has been made that the order dated 2-12-1983 of the respondent no.2 be set aside and the respondents may be directed to refix the petitioner's salary in the scale prescribed for the trained graduate teachers with effect from 1966 or in the alternative with effect from 1-1-1973.

2. The petitioner was appointed as Assistant teacher on 11-6-1962 and at the time when the petitioner was appointed, the respondent school was a composite school consisting of standards V to XI. The petitioner was assigned the periods in Hindi and P.T. in different standards according to the discretion of the principal. After the appointment, the petitioner acquired the qualification of Sahitya Sudhakar in February, 1965 and S.T.C. in 1966. From February, 1965, the petitioner stated that he should have been given the pay-scale equivalent to B.A. S.T.C.. On 4-6-1965, the Government introduced new policy regarding Secondary schools. In pursuance of the said policy, standards V to VIII were treated as primary school and VIII to XI was treated as secondary school. The petitioner was treated as protected teacher and he was absorbed in the primary section of the said school. The petitioner was given the salary in the scale of 165-280, the pay-scale prescribed for S.S.C. trained. After Desai Pay Commission, the petitioner's salary was fixed in the scale of 290-560, the pay-scale prescribed for S.S.C. trained teacher, whereas the pay-scale for B.A. S.T.C. teacher was of 440-640 and this pay-scale has been claimed by him from 1-1-1973. With effect from 1-7-1975, the petitioner has been absorbed in the secondary section of the school and he has been paid the scale of S.S.C. trained. A representation has been made by the petitioner for giving him the pay-scale in the grade of 440-640. The denial of that pay-scale to the petitioner has resulted in filing of this Special Civil Application.

3. It is not in dispute that the identical matter has been decided by this Court in Special Civil Application No.407 of 1978 and the dispute was that whether the petitioner was entitled for the benefit of the improved qualification which he acquired after entering in the service and this dispute has been settled by this Court in the Special Civil Application No.407 of 1978 decided on 1-7-1983. The counsel for the respondent admits that the circular has also been issued by the Government to give benefit of the improved qualification to the teachers. He further states that the petitioner is entitled for the benefit of the pay-scale for the improved qualification from the date as given therein and not from the date on which the petitioner acquired the improved qualification.

4. The counsel for the petitioner on the other hand said that in view of the decision of this Court, he is entitled for the pay-scale prescribed for the improved qualification from the date on which he acquired the

improved qualification.

5. I do not want to go on the merits of these contentions as I am of the opinion that this matter should be decided by the respondent. This course has been adopted for the reason that no reply is filed.

6. This Special Civil Application is disposed of with the direction that the petitioner shall make a representation in respect of his grievance made by him in this Special Civil Application to the respondent no.3 and respondent no.3 shall decide the said representation within a period of three months from the date of receipt of the same. The petitioner shall make his representation within a period of one month from the date of receipt of certified copy of this order. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-